

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLN.NO.4475 OF 2006
(FOR LEAVE TO APPEAL)
IN
C.C.NO.1676/SS/2004

Development Credit Bank Ltd. ..Applicant
Vs.
JIK Industries Ltd. & Ors. ..Respondents

...
H.H.Nagi Nagi and Associates for Applicant
Mr.S.R.Shinde A.P.P. for the State
Ms.N.V.Thakkar i/b Amit P.Ghag for Respondents
Nos.1 to 5 and 7.

...
CORAM: SMT.V.K.TAHILRAMANI, J.
DATE : MARCH 8, 2007

P.C.

1. Heard the learned counsel for the applicant-original complainant, the learned counsel for the respondent-original accused nos. 1,2, 6 and 7 and the learned A.P.P. for the State.

2. Being aggrieved by the judgment and order dated 13.11.2006 passed by the learned Metropolitan Magistrate, Small Causes Court at Mumbai in Case No. 1676/SS/2004 whereby the respondents-original accused nos.1, 2, 6 and 7 came to be acquitted, this leave to appeal against acquittal has been preferred.

3. I have perused the order dated 13.11.2006. One of the main grounds for dismissing the complaint, was that the counsel for the accused submitted in writing vide Exhibit-3 that the writ petition of the present complainant was also dismissed. The said writ petition was Writ Petition No. 2395 of 2006 preferred by the complainant against the order of the learned Sessions Judge whereby process against the original accused nos.1, 2,6 and 7 was quashed. However, admittedly, the said writ petition has not been dismissed and it is still pending before this Court. The learned counsel for the respondents admits that in fact incorrect statement has been made before the learned Magistrate. However, she has pointed out that the said complaint was not dismissed only on that ground. Be that it may; the main ground for dismissing the complaint, was that the counsel for the accused submitted in writing that the writ petition of the complainant was dismissed. In this view of the matter, the order of the learned Magistrate deserves to be set aside. Leave to file appeal, is granted. Place appeal for admission on board on 12.3.2007. Application is disposed of.

[V.K.Tahilramani, J.]